

Exhibit 1

1 IN THE UNITED STATES DISTRICT COURT

2
3 FOR THE DISTRICT OF NEW HAMPSHIRE

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6
7 DERICK ORTIZ, individually and on behalf of all

8
9 others similarly situated,

10
11 VS NO: 1:19-CV-01025-JL

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13 SIG SAUER, INC.

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15 *****

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19 DEPOSITION OF SEAN TONER

20
21 This virtual deposition taken by agreement of
22
23 counsel, on May 19, 2021, commencing at 10:00 a.m.

Page 1

1 it first started the design phase in the
2 spring of 2013?

3 A Yes.

4 Q Have you consistently worked on the P320 since
5 you were staffed to it in the spring of 2013?

6 A I worked on the P320 for approximately three
7 years until 2016, at which time I transitioned
8 over to a team lead position in the suppressor
9 product line in our company, and then I went
10 back to the pistol P320 team in roughly the
11 spring of 2017.

12 Q So early 2016, you left to work on suppressor
13 projects?

14 A Correct.

15 Q Did you leave to work on suppressor projects,
16 if you recall, before or after April 2016?

17 A Can you say that again? You broke up.

18 Q Do you recall when you left for suppressor
19 projects, was that before or after April of
20 2016?

21 A I believe it was before. It was probably more
22 in the March time frame.

23 Q Were you working on the P320 project when the

1 U.S. Army approached Sig about the discovery
2 of some drop fire issues with the M17, were
3 you on the P320 project at the time, I believe
4 it was April of 2016?

5 A I was on the project when the Army informed us
6 of the drop fire incident, but that was not in
7 2016. It was in February of 2017.

8 Q Thank you. So you were working on the P320
9 project in February 2017 when the Army
10 approached Sig, correct?

11 A Correct.

12 Q And you were working on the P320 project when
13 the U.S. Army selected the pistol for the M17
14 pistol, right?

15 A At the time that was roughly January of 2017,
16 I was still with the suppressor team, but once
17 we won the contract, I was transitioned over,
18 back over to the pistol.

19 Q Got it. So you have been deposed previously,
20 right?

21 A Yes.

22 Q How many times have you had your deposition
23 taken?

1 context?

2 A It depends on context, both the Sig Sauer or
3 the contractor, if you want to use a generic
4 term, can submit an ECP and also the Army or
5 the government contractor can -- government
6 entity can submit an ECP.

7 Q And did an ECP occur with the M17 service
8 pistol in early 2017?

9 A I don't remember the exact date of when we
10 submitted our ECP, but yes, we did submit an
11 ECP.

12 Q What was the nature of the ECP?

13 A After the Army informed us about this problem,
14 we decided to take some mass out of the
15 components, and that is what that ECP was for.

16 Q Why did you decide to take some mass out of
17 the components?

18 A With further testing and evaluation, we saw
19 that the trigger was pulling itself,
20 essentially moving on its own when dropped at
21 certain angles, and reducing the mass
22 eliminated that deficiency.

23 Q Did the Army consider this a problem?

1 not.

2 Q I don't mean to put you on the spot, would you
3 say the U.S. Army has more or less experience
4 in pistol design and engineering than Sig
5 Sauer?

6 A It sounds like a pretty -- you are asking for
7 my opinion. I would say Sig Sauer has got
8 more experience.

9 Q Okay. Is the P320 drop safe?

10 A Yes, it passes U.S. safety standards.

11 MR. JOYCE: I am just going to
12 object based on time frame, in terms of which
13 iteration of the design you are talking about.

14 Q Let me try that again.

15 For P320s that have not been sent in
16 to the voluntary upgrade program, let's say
17 preupgrade of P320s, are those pistols drop
18 safe?

19 A Yes, they pass U.S. safety standards for CME
20 and NIJ and some state compliance.

21 Q Are those pistols safe to drop?

22 A Yes, per the safety standards that are
23 available, yes.

1 A In connection with P320?

2 Q Yes.

3 A He had no role.

4 Q Let me try that again.

5 What was his role with the M17
6 project?

7 A He is the program manager, so we have two
8 program managers at Sig for the MHS program or
9 had, excuse me. His role was mainly to more
10 customer interaction where the secondary
11 program manager was dealing with more
12 production side.

13 Q Do you agree with Mr. Bailey that dropping any
14 weapon with the safety off is inherently
15 dangerous?

16 A Safe handling of a firearm, loaded weapon of
17 any type, if you drop it, you are not
18 guaranteed that it is not going to go off.

19 Q That is based on an understanding that
20 safeties are mechanical devices. They can
21 fail. It is always possible that a pistol can
22 fire when dropped, right?

23 A Yes, and in our manual, we clearly state that.

1 explicitly. I think it was 2 meters high at
2 multiple angles.

3 Q Did Kirikou indicate that they had any drop
4 issues at this time?

5 A I don't recall whether they dropped Sig Sauer
6 pistols or not. I know they said they had
7 some experience with that problem with other
8 weapons.

9 Q Okay. And this does not refresh your
10 recollection as to whether this was before or
11 after the Army got in contact with Sig, right?

12 A Based on this e-mail, it looks like it is in
13 January of '17, so it would be somewhere just
14 before the Army notified us over that problem.

15 Q And I assume LW trigger, that refers to
16 lightweight trigger, right?

17 A Yes.

18 Q And am I correct that at a general level, the
19 voluntary upgrade program replaced the trigger
20 with a lightweight trigger, is that correct?

21 A Yes.

22 Q And the sear is replaced too for the voluntary
23 upgrade program, right?

1 A Yes.

2 Q The voluntary upgrade program, that replaces a
3 sear with a lighter sear, is that true as
4 well?

5 A Can you say that again?

6 Q Yes, the change to the sear pursuant to the
7 voluntary upgrade program, would that be a
8 lighter sear pursuant to the upgrade?

9 A Yes, it is a reduced mass sear compared to the
10 preupgrade model.

11 Q Is the striker pin change pursuant to the
12 voluntary upgrade program?

13 A Yes, we also reduced the mass of the striker.

14 Q In the voluntary upgrade program, did Sig
15 change the sear spring?

16 A No.

17 Q So the trigger striker pin and sear though are
18 replaced components in the voluntary upgrade
19 program, right?

20 A Yes.

21 Q And those three components, the trigger,
22 striker pin and sear were all replaced with
23 more -- with lighter components, right?

1 A Yes, reduced mass components.

2 Q So you are testing here certain changes that
3 were ultimately made through the voluntary
4 upgrade program, right?

5 A I am sorry. Can you say that again?

6 MR. JOYCE: Objection to form. You
7 can answer over objection.

8 Q So through this drop testing with a lighter
9 trigger, striker pin and sear, you are
10 essentially testing components that ultimately
11 were implemented in the voluntary upgrade
12 program, meaning a lighter striker pin and
13 sear, right?

14 A They didn't end up being the exact geometry
15 and form that we used in the voluntary upgrade
16 program, but they were reduced mass.

17 Q Were you testing a lighter trigger, striker
18 pin and sear in connection with any
19 anticipated drop issues at this time?

20 A Again, this was for a specific customer,
21 international customer, that was testing to a
22 standard that was above and beyond even the
23 military standard of the U.S. government.

1 where he says, actually, third sentence.

2 Do you see where he says, "I have
3 attached a link to a video so you can see what
4 happens - the first link is best. When the
5 slide and frame impact the concrete at the
6 same moment, the trigger continues to move to
7 the rear, just enough to deactivate the
8 safeties and apparently cause the striker to
9 move forward with enough force to fire. In
10 other words, everything works as designed and
11 no safeties fail. The trigger just pulls
12 itself."

13 Do you see that?

14 A Yes.

15 Q Is that an accurate synopsis of the drop fire
16 issue with the P320?

17 A Let me read it again, please.

18 Q Sure.

19 A Yes, what he is describing is when the gun
20 impacts the ground or the concrete at an angle
21 where the slide hits first, it causes the
22 trigger to keep moving through inertia, and
23 that is what is activating the weapon.

1 Q And when I say lightweight components, I mean
2 the trigger, sear and striker safety. Those
3 were replaced with lighter weight components,
4 right?

5 A No.

6 Q Okay. Was the trigger replaced with a lighter
7 trigger as part of the voluntary upgrade
8 program?

9 A Yes.

10 Q Was the sear replaced with a lighter sear as a
11 result of the voluntary upgrade program?

12 A Yes.

13 Q Now, as it relates to drop safety and not the
14 out-of-battery discharge issue alleged in
15 Hartley, drop safety only, what components
16 were changed in connection with the voluntary
17 upgrade program?

18 A The trigger was replaced with a lighter
19 version, reduced mass, I should say. The sear
20 was replaced with a reduced mass version, and
21 the striker pin was replaced with a reduced
22 mass version.

23 Q Striker pin, okay. Thank you.

1 Were there any other parts changes
2 relevant to drop safety enacted through the
3 voluntary upgrade program for the P320?

4 A We did change the safety lever. We went from
5 a noncaptive safety level to a captive safety
6 level, so it was captive on the trigger bar.

7 Q What do you mean by that? I am sorry, I don't
8 even understand those words.

9 In plain English, what is that?

10 A So when a user pulls the trigger, that
11 rearward motion of the trigger causes the
12 trigger bar to move forward. In turn, the
13 safety lever is in front of the trigger bar,
14 so when the trigger bar moves forward, the
15 safety lever rotates upward or in a
16 counterclockwise motion if you are looking
17 from the right side of the weapon, and the
18 earlier designs of the 320 utilized a spring
19 and a safety lever in combination that kept it
20 in place, but on the upgraded version, we put
21 a leg or material behind the trigger bar so
22 that the safety lever would only rotate with
23 the trigger bar so that when the trigger bar

1 is at rest, it prevents that safety lever from
2 rotating up.

3 Q Okay. I am not an engineer. So again, this
4 is relevant to drop safety?

5 A It is a redundant part of it, yes, there is a
6 minor portion of that.

7 Q So are there any other parts at issue in the
8 voluntary upgrade program relative to drop
9 safety other than the new trigger, sear,
10 striker pin and safety lever?

11 A No.

12 Q And pursuant to the voluntary upgrade program,
13 did Sig use the same components for the
14 trigger, sear, striker pin and safety lever
15 for the various models of P320s?

16 A Can you say that again? I am sorry, I lost
17 you there.

18 Q So if someone were to send in a pistol to the
19 voluntary upgrade program, Sig, among other
20 component changes, would change out the
21 trigger, sear and striker pin safety lever,
22 right?

23 A Yes.

1 Q And when Sig does that, would it use the same
2 components in one P320 as opposed to another
3 P320 sent in through the voluntary upgrade
4 program?

5 A Yes, they would all be the same.

6 Q What did Sig find when it conducted drop
7 testing with these new components after --
8 strike that.

9 What did Sig find after conducting
10 drop testing with the new components?

11 A So we found that we enhanced our drop safety
12 capability, and that we could pass other
13 standards that were beyond what the current
14 U.S. standards of SAAMI and NIJ are.

15 Q Can we flip back to the second page for just a
16 moment, and let's look at that first bullet
17 point. It says, problem recognized in P320.

18 Do you see that?

19 A Yes.

20 Q Do you agree that the drop issue is a problem?

21 A Again, it depends on what standard you are
22 comparing it to. U.S. standards are not very
23 stringent, so our gun, our design has passed

1 production?

2 A Give me a moment to review the document,
3 please.

4 Q Yes, please.

5 A Can you repeat the question?

6 Q Can the court reporter please read back my
7 question, please?

8 (The record was read.)

9 A Yes.

10 Q And again, for my next set of questions, I
11 will try to make this clear for the record, I
12 am only interested in the components that are
13 actually relevant to drop safety, meaning the
14 trigger, the sear, the striker pin and the
15 safety lever.

16 So those four postupgrade
17 components, are those the same components that
18 were ultimately used in the M17 and M18
19 project?

20 A So are you asking me if the components listed
21 in this document are the ones we used in the
22 M17 and M18?

23 Q Yes.

1 A Other than differences in part numbers, yes.

2 Q I am sorry, I am confused by that answer.

3 So those are the same components,
4 though the part numbers may be different? Did
5 I get that right?

6 A Correct, we have a unique set of numbers for
7 the MHS program.

8 Q So even though the part numbers are the same,
9 the components would function the same between
10 the M17 and civilian 320, right?

11 A Yes.

12 MR. JOYCE: You said even though the
13 part numbers are the same.

14 MR. DECKANT: Thank you. Early
15 morning here for me, early start.

16 MR. JOYCE: No worry.

17 Q Apart from the different part numbers, those
18 four components, the trigger, sear, striker
19 pin and safety lever, would function the same
20 between the M17 and M18 and the civilian
21 upgrade of the P320, right?

22 A Correct.

23 Q And again, I am only asking in the context of

1 break for?

2 MR. DECKANT: Up to you.

3 MR. JOYCE: 45 minutes, does that
4 work for you?

5 THE WITNESS: Yes, that is fine.
6 That is what I was going to suggest.

7 MR. DECKANT: Let's reconvene at
8 1:45.

9 THE VIDEOGRAPHER: It is 12:56. We
10 are going off the record.

11 (LUNCHEON RECESS.)

12 THE VIDEOGRAPHER: We are back on
13 the record. The time is 1:50.

14 FURTHER INTERROGATORIES BY MR. DECKANT:

15 THE WITNESS: Before I get started,
16 I would like to offer a clarification on one
17 of my previous answers.

18 Q Okay.

19 A You had asked the question about the Army and
20 how they deviated from the TOP standard, and
21 can you just repeat that question again, and I
22 will answer it and clarify that.

23 Q Sure. I don't exactly recall, but I think

1 what we are getting at is I may have asked, in
2 what ways did the Army's test deviate from
3 their TOP standard?

4 A So when the Army was testing the M17 and M18,
5 they tested it with mechanical safety in the
6 off position as well as additional angles that
7 are beyond what the TOP outlines.

8 Q Got it. It was one of those additional angles
9 where they noticed the drop fire issue, right?

10 A Correct.

11 Q Did they notice the drop fire issue at one of
12 the angles originally called for from the
13 original TOP protocol?

14 A No, it was an angle that was not part of the
15 standard.

16 Q I am going to introduce another document.
17 Give me a second. It is Exhibit 2. Please
18 let me know when you have Exhibit 2 available.

19 (Whereupon, Exhibit Number 2,
20 test results spreadsheet, marked for
21 identification.)

22 A I have it up.

23 Q We are going to be focusing on the tab called

1 Q Okay. And you have not seen any test results
2 indicating any drop fires with the components
3 that went into production with the voluntary
4 upgrade program, right?

5 A Correct.

6 Q Let's go down to the second page.

7 Same question, do you see the
8 negative 90-degree angle, it says, "Release on
9 drop number 17, manual safety was engaged
10 after drop."

11 Do you see that?

12 A Yes.

13 Q So similar to the above, there was an issue
14 indicative of a drop fire on drop number seven
15 and after inspecting the pistol, the manual
16 safety was found to be engaged following the
17 drop, right?

18 A What it is saying is there wasn't a fire,
19 there was a striker release, and the manual
20 safety was engaged after the drop.

21 Q Thank you. And let's take a look at the third
22 and final page.

23 Here we are seeing a fire on drop

1 number 16 and a release on number 20, and the
2 same issue with the manual safety was found to
3 be engaged after both releases, right?

4 A Yes.

5 Q You can set this document aside, please. One
6 moment, please.

7 (Whereupon, Exhibit Number 64,
8 E-mail, marked for identification.)

9 Q I made Exhibit 64 available. Let me know when
10 you have that up, please.

11 A Okay.

12 Q Have you seen Exhibit 64 before?

13 A I have not, but it is an e-mail addressed to
14 me. I just don't recall reading it.

15 Q It is actually, for the sake of the record, it
16 says it is an e-mail from you --

17 A Excuse me.

18 Q No problem. Long day for us all. This is
19 dated November 23, 2016, right?

20 A Yes.

21 Q And below that, there is an e-mail from Adrian
22 Thomele to Ed Murphy that you are copied on?

23 A Yes.

1 for sale?

2 A We did look at some of the NATO orientations,
3 yes.

4 Q Same question about ULM standards?

5 A We did not do ULM standards, but again, ULM is
6 a standard in which they pretty much drop it
7 at whatever angle they want. It is not a
8 super-defined spec.

9 Q Is there a standard under which state tested
10 P320 before its initial sale -- strike that.

11 Is there any particular standard on
12 this list that Sig followed when testing the
13 P320 prior to its initial sale, in connection
14 with drop testing?

15 A Yes. SAAMI and NIJ. As well as NATO.

16 Q Does it surprise you that there is two
17 occurrences of drop buyers under the NIJ
18 standard for the P320 SC model?

19 MR. JOYCE: Objection to form. You
20 can answer over objection. Objection to the
21 foundation. You can answer over the
22 objection.

23 THE WITNESS: Can you repeat the

1 question?

2 Q Does it at all surprise you there were two
3 drop fires when testing the P320 SC pursuant
4 to NIJ standards, right?

5 MR. JOYCE: Same objection.

6 THE WITNESS: No, it doesn't.

7 Q Prior to selling the P320, Sig had conduct
8 drop testing pursuant to the NIJ standards,
9 right?

10 A Correct.

11 Q Presumably no drop fires were found when
12 conducting those tests, right?

13 A Correct.

14 Q Do you know why two drop fires were found when
15 doing testing pursuant and to the NIJ
16 standards here and no drop fires had occurred
17 previously?

18 A One of the things you will notice on the
19 spreadsheet is that there is multiple drops,
20 you see the amount of drops as 70. So we were
21 dropping the gun multiple times and one
22 orientation and moving to another orientation
23 dropping it multiple times, which is beyond